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IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, A. D. 1940

**No. 505**

JOHANNES B. KESSEL and LOUIS HOFFBERG,  
*Petitioners,*

*vs.*

VIDRIO PRODUCTS CORPORATION,  
*Respondent.*

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE  
SEVENTH CIRCUIT, AND BRIEF IN SUPPORT  
THEREOF.**

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**PETITION FOR WRIT OF CERTIORARI.**

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*To the Honorable the Chief Justice and Associate Justices  
of the Supreme Court of the United States:*

Now come Johannes B. Kessel and Louis Hoffberg, petitioners, and respectfully petition this Honorable Court to grant a writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit to review a judgment of that Court reversing a decree of the District Court of the United States for the Northern District of Illinois, Eastern Division.

A certified transcript of the Record in the case, including the proceedings in said Circuit Court of Appeals, is furnished herewith, in compliance with Rule 38 of this Court.

### **Summary and Short Statement of the Matter Involved.**

This action was brought for infringement of Kessel Patent No. 2,134,048 on a small portable electric washing machine. The District Court found defendant guilty of infringement and ordered an injunction and accounting. The Circuit Court of Appeals reversed the decree of the District Court with directions to dismiss the complaint for want of equity.

This petition is directed to a review of the decision of the Circuit Court of Appeals.

### **Jurisdiction.**

1. This is a suit arising under the Patent Laws of the United States, Judicial Code, Sec. 24 (7) (28 U. S. C. A. Sec. 41 (7)).

2. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. Sec. 347).

3. The date of the decree which petitioners seek to have reviewed is June 5, 1940 (Rec. 435). The petition for rehearing was denied July 17, 1940 (Rec. 436).

### **Questions Presented.**

1. Whether the Circuit Court of Appeals, under Rule 52 of the Supreme Court Rules of Civil Procedure, is bound by the findings of fact made by the District Court in the case at bar, including findings that the Kessel invention was not disclosed by the Engberg patent or any other prior art references.

2. Whether the inventor is estopped by reason of amendments made by him during the prosecution of his application, from claiming the benefits of improvements which were not disclosed by any prior references.

3. Whether a licensee, who is also the assignor, is permitted to urge such a narrow construction of a patent as to render the patent essentially worthless.

#### **Reasons Relied on for Allowance of Writ.**

The discretionary power of this Court to grant a writ of certiorari is invoked upon the following grounds:

1. That the Circuit Court of Appeals, in its decision, has overlooked or disregarded the findings of fact made by the District Court, and has not considered whether said findings were substantiated by the evidence.

2. That the decision of the Circuit Court of Appeals holding that the patentees are estopped by reason of amendments made by them during the prosecution of their application from claiming the benefits of an improvement which was not disclosed by any prior references, is in apparent conflict with the decisions of other Circuit Courts of Appeal that a patentee is not estopped by reason of the amendments of his claims from claiming the benefits of his invention, provided that the improvement was not disclosed by the prior references.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit should be granted.

J. ROBERT COHLER,  
*Counsel for Petitioners.*